



UNITED STATES SENATE
**REPUBLICAN
POLICY COMMITTEE**

Larry E. Craig, Chairman
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Two Exceptional Nominees To D.C. Circuit Have Been Waiting a Year

Time to Confirm Estrada and Roberts

Miguel Estrada and John Roberts are two of the finest appellate lawyers in the country; indeed, they are two of the more experienced appellate lawyers in the entire history of the country. Mr. Estrada has argued 14 cases at the U.S. Supreme Court, and Mr. Roberts has argued 33 cases there. We doubt that all of the hundreds of lawyers in the Legislative Branch *combined* – Members, officers, Congressional staff, employees of the General Accounting Office, the Library of Congress, the Congressional Budget Office, and more – have argued that many cases at the Supreme Court. The records of Roberts and Estrada are rare and remarkable.

These two outstanding lawyers were nominated to the United States Court of Appeals for the District of Columbia Circuit on May 9 of last year. They have yet to have a hearing in the Judiciary Committee.

More than 16 percent of all seats on the courts of appeals are vacant, and many of these vacancies have been designated “judicial emergencies” by the Administrative Office of the U.S. Courts. Vacancies on the D.C. Circuit can be especially critical, however. The D.C. Circuit has been called the second most important court in the land because Congress has given it exclusive jurisdiction over a number of legal questions (see over). For example, in last fall’s USA PATRIOT Act, the D.C. Circuit was given exclusive jurisdiction to review *habeas corpus* decisions involving suspected alien terrorists. Pub.L. 107-56, §412(a)-“236A(b)(3)”, 115 Stat. 352, 8 U.S.C.A. §1226a.

The unique responsibilities of the D.C. Circuit provide yet another reason why these outstanding nominees, Estrada and Roberts, ought to be confirmed, and soon.

Miguel Estrada was born in Tegucigalpa, Honduras. He spoke virtually no English when he came to the United States at age 17. Within a few years, he had distinguished himself at Harvard Law School where he was on the editorial board of the law review. Following graduation, Mr. Estrada clerked at the U.S. Court of Appeals for the Second Circuit and the United States Supreme Court. He has been an assistant U.S. attorney in the Southern District of New York and an assistant to the Solicitor General of the United States. He has practiced law in the private sector. The American Bar Association rates Mr. Estrada “well-qualified.”

John Roberts also was graduated from Harvard Law School where he was managing editor of the law review. Mr. Roberts also clerked at the Second Circuit and the U.S. Supreme Court. He has been a special assistant to the Attorney General of the United States, an Associate Counsel to the

President, and a Principal Deputy to the Solicitor General of the U.S. Mr. Roberts is a member of the American Law Institute. The ABA rates Mr. Roberts “well-qualified.”

One example of the D.C. Circuit’s unique jurisdiction is given above, and others appear below. This list is not exhaustive, but some of the more important examples are shown:

1. The United States Court of Appeals for the District of Columbia Circuit is where a party must go to claim that agency regulations did not conform with certain “sunshine” requirements of the Administrative Procedures Act. 5 U.S.C.A. §552b(g).
2. An organization designated as a “foreign terrorist organization” may seek judicial review of such designation only in the D.C. Circuit. 8 U.S.C.A. §1189(b)(1).
3. Most rules “of general and national applicability” promulgated by the Federal Energy Administration can be reviewed only in the D.C. Circuit. 15 U.S.C.A. §766.
4. A constitutional challenge to the North American Free Trade Implementation Act or the United States-Canada Free-Trade Agreement Implementation Act can be brought only in the D.C. Circuit. 19 U.S.C.A. §1516a(g)(4)(A).
5. Determinations of the Federal Election Commission as to which presidential candidates are eligible for Federal dollars to run their campaigns are reviewable only at the D.C. Circuit. 26 U.S.C.A. §9011(a) and §9041(a).
6. Only the D.C. Circuit is authorized to review certain decisions made by the Administrator of EPA under the Resource Conservation and Recovery Act (RCRA). 42 U.S.C.A. §6976(a)(1).
7. Judicial review of air quality standards, emission standards, and related matters that are promulgated by the Administrator of EPA under the Clean Air Act must be obtained in the D.C. Circuit. 42 U.S.C.A. §7607(b)(1).
8. Only the D.C. Circuit is authorized to review regulations promulgated under CERCLA (the Comprehensive Environmental Response, Compensation, and Liability Act of 1980). 42 U.S.C.A. §9613(a).
9. When the Secretary of the Interior makes determinations regarding offshore plans for exploration, development, or production of oil or gas sites, those determinations are reviewable only at the D.C. Circuit. 43 U.S.C.A. §1349(c).
10. Certain decisions of the Federal Communications Commission are appealable only to the D.C. Circuit. 47 U.S.C.A. §402(b).

Miguel Estrada and John Roberts will be outstanding additions to the D.C. Circuit, the “second most important court in the land” – and it is time to confirm them.